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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Market-Dominant Price Change	)))	Docket No. R2023-1

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE
(November 7, 2022)

Pursuant to Order No. 6296, the Association for Postal Commerce ("PostCom") submits these comments on the United States Postal Service's Notice of Market-Dominant Price Change ("Notice"), filed on October 7, 2022 and scheduled to take effect on January 22, 2023. With one exception in the Periodicals class, the prices proposed by the Postal Service appear to comply with the statutory price cap, in that in each class, the Postal Service's pricing proposals produce increases that do not exceed the pricing authority for that class. We discuss this exception below, along with other features of the price change that raise general issues of reasonableness, including prices that are at odds with Commission efforts to improve workshare passthroughs. Perhaps more importantly, however, the instant price change highlights fundamental flaws in the Commission's approach to price regulation.

I. THE COMMISSION RULES ENCOURAGE RISKY PRICING BEHAVIOR

January 22, 2023 will see the third significant increase in rates on market dominant products in eighteen months. This frequency and magnitude of rate changes is unprecedented and is being carried out without any apparent effort to understand the impact that such changes will have on mail volume. The Postal Service's October 7 request was filed before the Postal Service had compiled a single fiscal quarter worth of data on the impact of the most recent price change.

Implementing unprecedented change in the complete absence of empirical data is an inherently risky behavior.

If the Postal Service were a private enterprise, those risks would ultimately be borne by shareholders or owners. Because the Postal Service is a government monopoly, the cost of egregiously risky behavior is ultimately borne by ratepayers and/or taxpayers. By vitiating the CPI-based price cap, the Commission has amplified the incentive for the Postal Service to maximize the value of its monopoly while simultaneously exposing the customers of the Postal Service to unnecessary risk. PostCom has already petitioned the Commission to reexamine its rate regulations in light of the passage of the Postal Service Reform Act of 2021. The Postal Service's most recent request is further evidence of why reconsideration is necessary and should be taken up immediately by the Commission.

II. PERIODICALS

Generally speaking, the rate increases within Periodicals appear to comply with statutory requirements and encourage efficient preparation. However, Periodicals mailers are in some cases already experiencing effective rate increases as the Postal Service phases out the Flats Sequencing System (FSS). As the Postal Service acknowledged in its response to CHIR No. 3, the removal of FSS scheme preparation standards has required some periodicals mailers to prepare additional bundles and incur additional postage.

Following the decision in *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018), overturning its proposed rules governing the rate treatment of proposed mail preparation changes, the Commission has yet to establish defined rules governing when a change in mail preparation requirements or other action by the Postal Service results in a *de facto* change in rates that must be considered when determining price cap compliance. In closing

Docket No. RM2018-11, however, the Commission made clear that it "does not abdicate its authority to regulate mail preparation changes as 'changes in rates' under the price cap" and that it "will continue to monitor such changes and take appropriate action consistent with the court's guidance . . . should the need arise." Order No. 5113 at 5. Chief among the guidance issued by the D.C. Circuit was that a requirement might be considered a change in rates "[w]here an increase in mail preparation requirements for one cell will *drive* mailers to use a *higher-priced cell*," and if so, "the resulting increase in volume in the latter should count against the rate cap." *United States Postal* Service, 886 F.3d at 1256 (emphasis in original).

Certain Periodicals mailers have indeed been driven to higher rate categories by the FSS changes. In locations where the Postal Service has already removed the FSS, it has eliminated FSS sort schemes, which has resulted in mailers having to prepare more bundles. Mailers are now required to create individual Carrier Route and 5-digit/scheme bundles instead of the FSS Scheme bundle to satisfy modified entry requirements. Because the Periodicals rate structure includes bundle charges, the effective rates paid by Periodicals mailers have increased apart from the proposed changes in this docket. While the magnitude of the increase varies by mailer, some Periodicals are experiencing increases exceeding ten percent.

The rates proposed in this proceeding do not account for these changes in any way. The Postal Service has been able to simulate the mail preparation of FSS bundles in the absence of FSS prep requirements, however, and determined that "on average, FSS bundles will expand to 2.097 for carrier route or 5-Digit bundles." USPS Response to CHIR No. 3, Q.2.f. It has also provided a revised version of Library Reference USPS-LR-R2023-1/3 that incorporates adjustments to the Periodicals billing determinants to account for the *de facto* rate increase this change causes. PostCom submits that these revised billing determinants and cap authority calculations are the appropriate figures to use to determine the compliance of the Periodicals class in this proceeding. The Commission should remand the Periodicals prices to the Postal Service to be recalculated consistently with these revised billing determinants.

III. WORKSHARE DISCOUNTS

As PostCom has noted in previous proceedings, the Postal Service once again has gamed the Commission's passthrough boundaries, which has the effect of reducing efficiency. For instance, in explaining its new SCF pallet discounts (Notice at 20), the Postal Service defaults to the minimally acceptable 85 percent passthrough because the discounts are new. While the Postal Service may be considered to be exercising caution, this may have the effect of limiting adoption of the new incentives with the result of reducing overall efficiency. The Commission should reconsider the passthrough bounds and utilize its authority to incentivize efficiency.

In addition, the flattening of the per-pound rate for all zones Carrier Route and Presort in BPM Flats diminishes the incentive for drop shipping from non-destination to a destinating NDC/SCF or DDU as the only incentive inheres within the per piece rate differentials between non destination and NDC/SCF and the DDU. Analysis by some PostCom members suggests that the incentive to drop ship these pieces may erode by as much as fifteen percent.

IV. NOTICE AND DOCUMENTATION

The Postal Service is to be commended for making documentation necessary for updating software available at the time that its Notice was filed. While a number of errors were discovered, this timeliness represents a significant improvement over previous rate notices. Nonetheless, the amount of time between the notice of a rate increase and its planned implementation is not adequate. If a price change includes structural changes in addition to changes in rate levels, 90 days is not sufficient for software companies to make required changes without having to resort to heroic efforts and/or diverting resources from other priorities. This in turn impacts the clients of said companies who are left with severely limited time periods to test software prior to implementation.

PostCom notes that in its comments in Docket No. RM2022-7, the Postal Service has asked the Commission for 150 days from the effective date of the Commission's final order to implement changes in the service performance reporting dashboard. For some of the Commission's recommended changes, the Postal Service is requesting three fiscal quarters to comply.

PostCom is not arguing that the tasks are identical, but the lead times requested by the Postal Service, for changes that were noticed months ago, reflect the challenges in marshalling and managing resources to implement new requirements requiring technological changes. When the Postal Service is considering structural changes to its products, it is able to begin implementing technological changes well before the Governors act to approve the attendant rates. By providing documentation only after the Governors have approved a rate increase, commercial mailers are already well behind schedule.

The Postal Service's reluctance to share price level information before the Governors have acted is understandable. However, there are no legal constraints preventing the Postal Service from sharing planned structural changes at the time it begins implementation of internal changes. The Commission should reconsider the required notice period which allows sufficient time to determine regulatory compliance, but that is insufficient for mailers who must implement complex changes.

V. CONCLUSION

With the exception of Periodicals rates, the proposed rate changes appear to comply with the Commission's rules. Therein lies the problem. The current rules allow the Postal Service to impose multiple rate increases per year, filing for new rate increases before it or the Commission has had any opportunity to evaluate how previous increases have impacted volume or affected elasticities. PostCom is concerned that the effects of these rate increases will compound and cause irreversible harm to the postal industry and the Postal Service. By the time these impacts are identified, it may be too late to reverse course. PostCom therefore urges the Commission to act on PostCom's Petition for Rulemaking in Docket No. RM2022-5 and modify its ratemaking regulations to protect against these harms.

Respectfully submitted,

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